IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30-3-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.19455 of 1997

General Manager,
Bank of Madura Ltd.,
758, Anna Salai,
Chennai - 600 002. ... Petitioner

Vs.

1. M.Natesan

2. The Presiding Officer,
Industrial Tribunal,
Chennai. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorari calling for the records pertaining to the award made by the second respondent in I.D.No.41 of 1992 dated 16.6.1997 and quash the same.

For Petitioner : Mr.Sanjay Mohan, for
M/s.Ramasubramaniam Associates

For 1st Respondent : Mr.D.Hariparanthaman

2nd Respondent : Court

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O R D E R

Petitioner seeks to quash the award made by the Industrial Tribunal, Chennai, the second respondent herein in I.D.No.41 of 1992 dated 16.6.1997.

2. The brief facts necessary for disposal of the writ petition are as follows.

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(a) Petitioner is a Commercial Bank, introduced a scheme called Dina Semipu Daily Thrift Scheme with an idea of inculcating the habit of saving small amounts by the general public. Commission agents were taken on contract for services, with specific agreement with the bank and such agents have to collect the deposits from the deposit-holders at their door steps and deposit the same in the bank and also to canvass fresh deposits for the scheme. The contract is terminable by giving one month notice on either side.

(b) The first respondent was appointed as Commission agent. He entered into an agreement and his contract was terminated by order dated 19.3.1991. First respondent raised Industrial Dispute before the Conciliation Officer and the same having failed the Central Government referred the dispute to the second respondent for adjudication to adjudicate as to whether the first respondent, Canvassing-cum-Collection Agent was a workman of the Bank of Madura Limited and if so whether the action of the petitioner Bank in terminating the services of the first respondent by order dated 19.3.1991 was justified, if not, to what relief the first respondent is entitled to.

(c) First respondent filed a claim statement before the Labour Court stating that he was employed in the petitioner bank as a Dina Semippu Canvassing/Collection Agent for which he was paid commission at 2%. It is also stated that there was an award passed by the Central Government Industrial Tribunal at Hyderabad declaring the Deposit Collectors as workmen of the respective banks and they are to be re-employed according to their status, if the employees choose to exercise their option. The first respondent therefore requested for permanent employment.

(d) The first respondent further submitted that during September, 1989, there was short remittance of a sum of Rs.7195/-, due to his family circumstances, which was directed to be remitted by the petitioner bank and the first respondent also remitted the same. Thereafter he was terminated by order dated 19.3.1991.

3. Petitioner filed counter statement stating that there was no employer-employee relationship between the bank and the first respondent and there was no administrative or disciplinary control over the agents and the dispute regarding the status of Deposit Collectors are pending before the High Court of Andhra Pradesh, challenging the order of the Central Government Industrial Tribunal. It is also stated that the first respondent unauthorisedly withheld Rs.7,195/- collected between October, 1988 and August, 1989, from the depositors and having failed to remit the same to the branch of the bank first respondent violated the agreement. Therefore the petitioner management terminated the services of the first respondent as per the clause in the agreement.

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4. The Labour Court, after considering the merits of the rival contentions, passed an award holding that the first respondent is a workman of the Bank of Madura Limited and is entitled for reinstatement with continuity of service and backwages of Rs.500/- per month. As against the said award this writ petition is filed.

5. The learned counsel appearing for the petitioner Bank contended that the first respondent is not a workman of the petitioner Bank and having admitted the delay in remittance and subsequently remitted the amount along with interest, he has virtually admitted the guilt and in such circumstances, no regular enquiry need be conducted, even assuming he was a workman. According to the learned counsel, the Labour Court was not right in giving a finding that the first respondent was a workman and he failed to deposit the amount in time due to the circumstances beyond his control, which could be a valid ground for the delay in remittance and ordered reinstatement with continuity of service and backwages at the rate of Rs.500/- per month. The learned counsel further submitted that even assuming that there is a flaw on the part of the management in not conducting enquiry, first respndent having lost the confidence of the bank, cannot be reinstated and some reasonable lumpsum can be ordered to be paid.

6. The learned counsel for the first respondent submitted that only on the basis of the Central Government Industrial Tribunal award holding that the Canvassing/ Collection Agents are workmen, the first respondent requested regularisation, pursuant to which the management searched for a charge to be framed and the belated payment was taken as a ground to proceed agaisnt the first respondent and as the amount itself was remitted in time, termination of the first respondent on the said ground without conducting enquiry is nothing but victimisation. The contention raised by the writ petitioner before the Labour Court was that All India Bank Deposit Collectors Federation having their office at Hyderaad raised an industrial dispute in I.D.No.14 of 1980 before the Central Government Industrial Tribunal, Hyderabad, claimig permanent status for Collection Agents in the services of various banks, including the petitioner Bank and claiming pay scale and allowances and other services conditions of clerical employees. The Central Government referred the dispute raised by the Tiny Deposit Collectors Federation for adjudication and the Industrial Tribunal passed orders in favour of the Deposit Collectors and the said order was challenged in W.P.No.9783 of 1983 before the High Court of Andhra Pradesh and the High Court of Andhra Pradesh dismissed the writ petition against, which the Civil appeal was filed by the Indian Banks Association and the same was also dismissed by the Honourable Supreme Court in the decision reported in (2001) 3 SCC 36 (Indian Banks Association v. Workmen of Syndicate Bank and others). The learned counsel therefore submitted that it is no longer right on the part of the petitioner bank to contend that the first respondent is not a workman, having accepted that the first respondent's claim is also covered under

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the Industrial Dispute adjudicated by the Central Government Industrial Tribunal, Hyderabad, in I.D.No.14 of 1980. The learned counsel therefore submitted that the first respondent being a workman, if at all any allegation is there regular charge has to be framed and disciplinary proceeding is bound to be conducted by the petitioner bank and the same having not been conducted, termination of petitioner's service is contrary to the principles of natural justice. Hence the learned counsel submitted that the order of the Labour Court is fair and justifiable and the petitioner is bound to implement the same.

7. I have considered the rival submissions made by the learned counsel for the petitioner as well as the first respondent in the light of the award of the Labour Court made in I.D.No.14 of 1980 passed by the Central Administrative Tribunal, Hyderabad, which was confirmed by the Honourable Supreme Court in the decision reported in (2001) 3 SCC 36 (Indian Banks Association v. Workmen of Syndicate Bank and others) and also the award of the Labour Court impugned in this writ petition.

8. In the light of the stand taken by the writ petitioner Management in the counter statement in paragraph 5, which reads as follows,

> "In this connection it is also useful to refer to the fact that the All-India Banks Deposit Collectors' Federation having their office at Hyderabad, raised an industrial dispute, I.D.No.14 of 1980 before the Industrial Tribunal, Hyderabad, claiming permanent status for the collecting agents in the services of the various Banks and including the Respndent-Bank and pay scales, allowances and other service conditions of clerical employees. The Central Government referred the dispute raised by the Tiny Deposit Collectors' Federation for adjudication before the Industrial Tribunal, Hyderabad, wherein the very same issues came up for consideration. Though the Tribunal passed orders in favour of the Deposit Collectors, the said order was challenged in W.P.No.9783 of 1983, which is pending before the Hon'ble High Court of Andhra Pradesh at Hyderabad. ....."

and the said writ petition filed before the Andhra Pradesh High Court having been dismissed and the Honourable Supreme Court also dismissed the Civil Appeals in the decision reported in (2001) 3 SCC 36, (Indian Banks Association v. Workmen of Syndicate Bank and others), it is not open to the writ petitioner bank now to contend that the first respondent is not a workman. Therefore the finding of the Labour Court in the impugned award that the first respondent is a workman is fair and proper.

9. The charge against the first respondent is that he has unauthorisedly withheld a sum of Rs.7195/- being the deposit amount collected from October, 1988 to August, 1989, without remitting the same

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into the branch on the next day of collection, and the same is in violation of clause 4 of the agreement. The petitioner has stated reasons that the delayed remittance was due to the family circumstances. Subsequently he has also remitted the amount with interest. The non-remittance of the amount in time, is explained by the first respondent. But no enquiry was conducted by the petitioner bank before terminating the service of the petitioner, who is a workman. Hence there is violation of principles of natural justice.

10. The charge is failure to deposit the amount collected from October, 1988 to August, 1989, and the first respondent accepted the same and remitted the amount with interest. The Labour Court also considered the plight of the first respondent that his daughter was kidnapped and murdered during the relevant period and he was in a disturbed mental condition and hence he failed to account for the money collected by him and that he had deposited the amount with interest, without raising any objection when the Bank pointed out about the non-remittance. The kidnapping and murdering of first respondent's daughter is also established by the fact of conviction given to one Vijayakumar by the Sessions Court, Erode. Therefore, I am of the view that the first respondent failed to deposit the amount in time due to his disturbed mental condition. Taking note of all these aspects, I am of the view that remitting the matter to conduct fresh enquiry, will serve no purpose. As rightly contended by the learned counsel for the management, reasonable compensation can be awarded to the first respondent to resolve the matter between the first respondent and the petitioner management.

11. Awarding compensation in lieu of reinstatement in appropriate cases is dealt with by the Honourable Supreme Court in the following decisions.

(i) In 1995 Supplement (4) SCC 549 (Rolston John v. Industrial Tribunal-cum-Labour Court) in paragraph 7 and 8 it is held thus,

> "7. As indicated earlier the termination of the service of the appellant by virtue of clause 24(e) of the Standing Orders constitutes retrenchment under Section 2(oo) of the Industrial Disputes Act. It is not the case of the respondent that the requirements of Section 25-F of the Industrial Disputes Act have been complied with in this case. The said retrenchment being in contravention of the mandatory provisions of Section 25-F was void and ineffective. Keeping in view the facts and circumstances of the case we do not consider it appropriate to give the relief of reinstatement.
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> 8. We accordingly direct that in full and final settlement of all the claims of the appellant and in lieu of reinstatement and consequential benefits, if any, the respondent shall pay the appellant a lump sum of Rs.50,000 within a period of six weeks from today. On such payment, the matter shall stand concluded

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between the parties. In the facts and circumstances of the case, we make no order as to costs."

(ii) In (2006) 5 SCC 173 (Municipal Council, Sujanpur v. Surinder Kumar) in paragraph 22 the Honourable Suprme Court held thus,

"22. We, therefore, allow the appeal and set aside the directions of the Labour Court and direct that in place of the respondent being reinstated with back wages, the appellant would pay monetary compensation to him, quantified at Rs.50,000. We make no order as to costs."

(iii) In (2006) 6 SCC 516 (Municipal Council, Samrala v. Sukhwinder Kaur) in paragraph 16 it is held as follows,

"16. However, it appears, before the High Court in the review application, the appellant itself had made a proposal to give lump sum compensation in lieu of her reinstatement. In view of that the appellant itself was before the High Court, we are of the opinion that interest of justice shall be met if a sum of Rs.30,000 is directed to be paid to the respondent, as was directed in State of M.P. v. Arjunlal Rajak ((2006) 2 SCC 711), Nagar Mahapalika v. State of U.P. ((2006) 5 SCC 127) and Haryana State Electronics Development Corpn. Ltd. v. Mamni ((2006) 9 SCC 434)."

(iv) In (2006) 7 SCC 752 (U.P. SRTC v. Man Singh) in paragraph 8 it is held thus,

"8. Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that instead and in place of the direction for reinstatement of the respondent together with back wages from 1986, interest of justice would be subserved if the appellant is directed to pay a sum of Rs.50,000 to him. Similar orders, we may place on record, have been passed by this Court in State of Rajasthan v. Ghyan Chand ((2006) 7 SCC 755), State of M.P. v. Arjunlal Rajak ((2006) 2 SCC 711), Nagar Mahapalika (now Municipal Corpn.) v. State of U.P. ((2006) 5 SCC 127) and Haryana State Electronics Development Corpn. Ltd. v. Mamni ((2006) 9 SCC 434)."

12. According to the learned counsel for the petitioner bank, first respondent is paid Rs.750/- per month from January, 1998 to February, 2007. The award of the Labour Court quantifies the backwages at the rate of Rs.500/- per month. First respondent is due to retire in the year 2011, even if he is reinstated. Already the amount of Rs.42,840/- is

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deposited by the petitioner bank, pursuant to the interim orders of this Court. First respondent is receiving interest once in six months out of the said deposit. Considering the charge against the first respondent and having regard to the loss of confidence shown by the petitioner bank against the first respndent, I am of the view that a compensation of Rs.75,000/- can be ordered to the first respondent payable by the petitioner bank. Already Rs.42,840/- is available under deposit. The said amount can be withdrawn by the petitioner bank and a lumpsum amount of Rs.75,000/- is ordered to be paid by the petitioner Bank to the first respondent towards full and final settlement within four weeks from the date of receipt of copy of this order.

The impugned award of the labour court stands modified in the above terms. The writ petition is ordered accordingly. No costs.

vr

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Presiding Officer, Industrial Tribunal, Chennai.

+1 cc to Mr.D.Hariparanthaman, Advocate sr.No.20939.

MM(CO)
dcp/13.4.07

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